

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) CE11068JI220
I hereby certify that this correspondence is being electronically transmitted on the date listed below [(37 CFR 1.8(a))]. on: <u>July 29, 2008</u> Signature <u>/Silvana Wiltshire/</u> <u>Silvana Wiltshire</u> Typed or printed name	Application Number 10/743,481 First Named Inventor Carlos M. Esquivia-Lee Art Unit 2614	Filed December 22, 2003 Examiner Dabney, Phylesha Larvinia
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheets(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 45%;"> <input type="checkbox"/> applicant inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registraton number <u>45,834</u> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34: _____ </div> <div style="width: 45%; text-align: right;"> <u>/Larry G. Brown/</u> Signature <u>Larry G. Brown</u> Typed or printed name <u>(954) 723-6449</u> Telephone number <u>July 29, 2008</u> Date </div> </div> <p style="margin-top: 20px;">NOTE: Signatures of all the inventors or assignees or record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, se below*</p>		
<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.		

(SB/33 (07-05))

UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT(S): Carlos M. Esquivia-Lee GROUP ART UNIT: 2614
APPLN. NO.: 10/743,481 EXAMINER: Dabney, Phylesha
Larvinia
FILED: December 22, 2003 Confirmation No. 7771
TITLE: ELECTRONIC COMMUNICATION DEVICE INCLUDING AUDIO
CHANNELING

CERTIFICATE UNDER 37 CFR 1.8(a)	
I hereby certify that this correspondence is being electronically transmitted on the date listed below:	
Date:	July 29, 2008
Signature	/Silvana Wiltshire/
Typed or printed name:	Silvana Wiltshire

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop: **AF**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant requests review of the Non Final Office Action mailed April 21, 2008, relating to the above-identified application in furtherance of the Notice of Appeal filed on July 29, 2008.

Concurrent with this submission, Applicant is paying the requisite fee for a one-month Extension of Time.

Claims 1-8 and 11-23 are pending in the application, as claims 9 and 10 were previously canceled. The latest version of the claims can be found in

Applicant's Response of February 19, 2008. In the Office Action, claims 1, 2, 5 and 6 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,631,191 to Holmberg (Holmberg) in view of the Prior Art of Holmberg and further in view of U.S. Patent No. 6,360,110 to Schmidt (Schmidt). In addition, claims 3, 4, 7, 8 and 12-23 were rejected under 35 U.S.C. 103(a) as being unpatentable over Holmberg, Schmidt and further in view of U.S. Patent No. 6,978,123 to Fuhrmann (Fuhrmann).

Independent Claims 1, 13 and 19

Independent claims 1 and 19 recite the limitations of an electronic communication device that includes both high and low audio speakers and that the audio channels are associated with the low audio speaker. In addition, independent claim 13 recites the limitation that the electronic communication device includes a high audio speaker. The Examiner admits that Holmberg does not disclose the concept of a high audio speaker (see page 3 of the Office Action of April 21, 2008). Nevertheless, the Examiner contends that it would be obvious to one skilled in the art to implement the high audio speaker of Schmidt into Holmberg (see page 3 of the Office Action of April 21, 2008). Applicants respectfully disagree.

Schmidt does describe the use of both high and low audio speakers in prior art mobile phones (see col. 3, lines 9-11). Even so, Holmberg goes on to say that such a solution is undesirable, as it adds expense and complexity to mobile phones (see col. 1, lines 27-29). As such, Holmberg teaches away from adding a high audio speaker to its handset design. In fact, to add such a high audio

speaker to Holmberg would defeat the very purpose of Holmberg, which is to make use of an inexpensive sound directing element to direct high audio away from a speaker (see col. 2, lines 9-20). That is, adding a high audio speaker to the mobile device of Holmberg, as the Examiner has proposed, would obviate the need for the sound directing element of Holmberg and the advantages that such an element provides.

Moreover, the Examiner attempts to show that the Prior Art of Holmberg establishes that the sound channels (7) of Holmberg are associated with a low audio speaker. Again, Applicants respectfully disagree. In particular, the sound directing part (3) is designed to leave the speaker (6) uncovered when the sound directing part (3) is in a first position, which corresponds to a mobile telephone or low audio mode (see col. 3, lines 19-21 and lines 41-43). In this first position, the audio is directed only through the speaker (6), i.e., not the sound channels (7) (see col. 3, lines 41-43). When the sound directing part (3) is moved to a second position, the sound directing part (3) covers at least part of the speaker (6), which causes sound to be directed through the sound channels (7) (see col. 3, lines 26-31 and lines 35-40). This second position is associated with a high audio or PMR (private mobile radio) mode (see col. 3, lines 35-40). That is, the sound channels (7) only receive audio when the radio is acting as a private mobile radio that is broadcasting high audio signals.

Conclusion

In view of the above, Applicant contends that the claims are patentable over the cited prior art references. Reconsideration and withdrawal of the rejection of the claims is respectfully requested. Passing of this case is now believed to be in order, and a Notice of Allowance is earnestly solicited.

The Commissioner is hereby authorized to charge any necessary fee, or credit any overpayment, to Motorola, Inc. Deposit Account No. 50-2117.

Respectfully submitted,

Date: July 29, 2008

By: /Larry G. Brown/

SEND CORRESPONDENCE TO:

Larry G. Brown
Attorney of Record
Reg. No.: 45,834

Motorola, Inc.
1303 E. Algonquin Road
IL01/3RD
Schaumburg, IL 60196

Tel: (954) 723-4295 direct line
Tel: (954) 723-6449 main line

Customer Number: 24273

Fax No.: (847) 576-3750

E-mail: docketing.schaumburg@motorola.com